

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LUKE J. SOULE,

Defendant.

8:01CR257

ORDER

This matter is before the Court on the request of the defendant seeking compassionate release. [Filing No. 33](#). The Defendant seeks a reduction of sentence pursuant to [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#) as amended by Section 603 of the First Step Act, [Pub. L. No. 115-391](#), 132 Stat. 5194 (2018). Defendant has filed his request for release with the prison system, and his request for compassionate release was denied by the warden of FCI Sandstone. In Section 603 of the First Step Act, Congress amended [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#) to permit defendants to move a sentencing court for compassionate release “after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” Under the law, it matters not that the COVID-19 pandemic creates a great health risk to many prisoners. Administrative exhaustion under the Act is a jurisdictional prerequisite to this Court making a decision as to compassionate relief.¹

¹ See e.g., [United States v. Heath](#), CR-13-102-SLP, 2020 WL 1957916, at *1 (W.D. Okla. Apr. 23, 2020) (the Court stated it had no authority to waive the exhaustion requirement as it is a statutory requirement); See [Malouf v. SEC](#), 933 F.3d 1248, 1256 (10th Cir. 2019) (“[C]ourts lack discretion to excuse the failure to exhaust administrative remedies” where exhaustion is a “statutory requirement.”); [United States v. Bell](#), No. 16-20008-02-DDC, 2020 WL 1923086 at *2 (D. Kan. Apr. 21, 2020) (court lacked jurisdiction over defendant’s motion for compassionate release under § 3582(c)(1)(A) based on COVID-19 pandemic due

Once it has been shown that the prisoner has

fully exhausted all administrative rights to appeal, a failure of the of the Bureau of Prisons to bring a motion on the defendant's behalf, or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, the court may reduce the term of imprisonment after considering the following factors: extraordinary and compelling reasons warrant such a reduction; or, the defendant is at least 70 years old, has served 30 years in prison for the offense or offenses the defendant is currently imprisoned; and a determination has been made by the Director of the BOP that the defendant is not a danger to the safety of another person or the community.

18 U.S.C.A. § 3582 (c)(1)(a)(i-ii).

It does not appear from defendant's motion, [Filing No. 33](#), that he has appealed the finding of the prison warden. Since the defendant has not shown to have exhausted all administrative rights with the BOP, the Court does not have jurisdiction at this time. However, the Court will appoint the Federal Public Defender's Office to oversee this case.

THEREFORE, IT IS ORDERED THAT:

1. Defendant's motion for compassionate release, [Filing No. 33](#), is stayed pending exhaustion of his administrative remedies.

to failure to exhaust administrative remedies; *United States v. Gonzalez*, No. 18-cr-00130-PAB, [2020 WL 1905071 at *2-3 \(D. Colo. Apr. 17, 2020\)](#) (the judiciary lacks "power to craft an exception" to § 3582(c)(1)(A)'s exhaustion requirement and because defendant's motion failed to indicate warden had responded to administrative request or that 30 days had lapsed from the warden's receipt of such request, motion had to be dismissed for lack of jurisdiction); *United States v. Perry*, No. 18-cr-00480-PAB, [2020 WL 1676773 at *1 \(D. Colo. Apr. 3, 2020\)](#) (finding court lacked jurisdiction over the defendant's request for compassionate release under § 3582(c)(1)(A) based on COVID-19 pandemic where he did not satisfy exhaustion requirement); "While courts do have some flexibility to disregard exhaustion requirements when they are judicially imposed," "statutory exhaustion requirements, such as those set forth in Section 3582(c), must be strictly enforced." *United States v. Roberts*, 2020 WL 1700032 *1-2 (S.D.N.Y. April 8, 2020); *United States v. Cox*, [2020 WL 1923220, at *3 \(S.D. Ind. Apr. 21, 2020\)](#); the Third Circuit Court of Appeals has held that § 3582(c)(1)(A)'s exhaustion requirement is "a glaring roadblock foreclosing compassionate release." *United States v. Raia*, No. 20-1033, [2020 WL 1647922, at *2 \(3d Cir. Apr. 2, 2020\)](#); *U.S.A. v. Gillis*, 14-CR-00712 SJO (1), [2020 WL 1846792, at *2 \(C.D. Cal. Apr. 9, 2020\)](#).

2. The Public Defender's office, Dave Stickman, is appointed to represent the defendant.

Dated this 8th day of June, 2020.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge